95-1590

No._____

Supreme Court, U.S.
FILED
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CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

RUBEN GONZALES AND JUAN VASQUEZ,
PETITIONERS,

-------- V. ---------

MOISES LUNA AND ASSOCIATES,
RESPONDENTS,

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA, SECOND APELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

RUBEN GONZALEZ, AND JUAN VASQUEZ
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32 pp

QUESTIONS PRESENTED

1. When a judge violates the principle of party's equality in the procedure, impeding evidently the opportunity of the party to be heard as Law commands, therefore attacking the Constitution's Warranties, then consider correct that authority has notorious partial behavior?

2. Does it really transcendent at administration of Justice and knows the searched truth, exact requisites of skill in Law about the same matter, perhaps in other cases it is necessary when one has not that knowledge; thereby, how could it be reasonable to find out the truth if the judge knows it?

3. Can the Government of the United States of America question other Countries of the World about thier interior Justice, without looking inside oneself; whereas to allow some States of the Union to break the citizen's warranties with unlawful Justice?

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1. IF THE TRIAL COURT NEVER LET US PROVE THE LEGAL MALPRACTICE OF THE ATTORNEY, WITH EXPERT TESTIMONY LIKE JUDGE CONSIDERED IN THE JUDGMENT, IS IMPORTANT TO MANIFEST THAT IT WAS BECAUSE THERE WAS TOO MUCH VIOLATIONS TO THE PRINCIPAL OF THE PARTY'S EQUALITY IN THE PROCEDURE 9

2. WHEN AT TRIAL THERE ARE ENOUGH ELEMENTS TO PROVE THE ACTIONS OF LEGAL MALPRACTICE, WITHOUT THE EXISTENCE OF AN EXPERT TESTIMONY, THERE IS NO REASON TO EXACT IT BECAUSE THE JUDGE KNOWS THE LAW, IS A PROFESSIONAL OF THAT MATTER AND EVIDENTLY HAS A SKILL AS A LAWYER. THAT'S WHY ALL THE ARTICLES WERE VIOLATED, INDICATED IN THIS POINT FROM THE CIVIL PROCEDURE CODE OF THE STATE OF CALIFORNIA AND THE CASES INDICATED ALSO 10

3. THE FINDINGS OF THE COURT OF APPEAL REFERRING IN THE CASE WHEN SEVERAL DOCUMENTS WERE REJECTED AT THE TRIAL COURT, ARE ILLEGAL REASONS FOR DISREGARD, IMPORTANT EVIDENCE NOT ADMITTED IN FIRST INSTANCE BECAUSE THE JUDGE WAS PARTIAL, AND THOSE PROOFS ARE THE CONSEQUENCE OF THE INVESTIGATION IN THE STATE BAR OF CALIFORNIA. 13

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

RUBEN GONZALEZ AND JUAN VASQUEZ,
PETITIONERS

------ v. -----

MOISES LUNA AND ASSOCIATES,
RESPONDENTS,

PETITION FOR A WRIT OF CERTIORARI

Ruben Gonzalez and Juan Vasquez, in Propria persona, petition for a writ of certiorari to review the decision of the court of Appeal of the State of California Second Appellate District Division Five.

OPINIONS BELOW

The judgement of the Court of Appeal Second Appellate District Division Five is unreported and is reprinted in the Appendix below ("Pet. App.") at 1a. The decision of the Supreme Court of California denied the pertinent part, "The Constitution, and the Laws of the United States which shall be made in Pursuance thereof, Shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the Contrary notwithstanding".

This case arises out of when Ruben Gonzales signed with Carlos Vasallo a contract to distribute the movie that Ruben Gonzalez and Juan Vasquez made in Mexico. The contract was signed on Dec 3, 1987 at the Sheraton hotel, Universal City, Some time later Appellants notice that the contract was not a distribution contract but was a contribution contract a $50,000.00 contribution from Vasallo for 50% of the movie, also the contract contained a fraudulent date of signing and a fraudulent place of signing. We went to see an attorney and met Moises Luna and Associates and exposed our case, we agreed with the services; so we paid the price conformed, exactly $25,000.00 Dollars; that attorney told us: "I'm going to fight for $3,000,000.00 Dollars", but he did not read the complaint before submitting it with the court on October 20, 1989. So then Appellants notice that the complaint was wrong, because the attorney did not put what Appellants had told him, Appellants asked why and the attorney answered: "Well, we never lie we know what we are doing". And after all, Appellant's case got dismissed on May 11, 1990, the attorney did not advise Appellants, just like previously agreed upon for a due hearing; seven months later on Dec 13, 1990 was the first time he told us, he never did before by any form of communication. That is why Appellants filed a Legal Malpractice complaint in the Superior Court of Los Angeles County, and the case corresponded to the Honorable Judge Ronald E. Cappai, Case No. BC 044370.

Appellants did appearance in propria persona at the Trial Court and exercised the action of Legal Malpractice against attorney Moises Luna

and Associates reclaiming them the damages and prejudices caused by professional malpractice amount of which was indicated; there was several reasons for exercising the action against attorney Moises Luna and Associates:

First. He did not put our case in the complaint, the points litigated in Appellant'S complaint belonged to another case; the facts were different to what Appellants had told them, this is a serious act of impropriety.

Second. In the court, during procedure the attorney had the obligation to execute whereas we made a contract (retainer agreement) To contend in our favor at trial against Carlos Vasallo including hearings and motions; results obvious that they were not responsible to stand in court when it was necessary, they did not present at the court the conviction's elements, neither made allegations for showing the ground of complaint by the Appellants and is uncontroversial that the attorney's failure to represent Appellants originated damages and prejudices to Appellants and must pay. Here was another fundamental reason.

Third. They did not communicated us by any form just exactly when the case had been dismissed, there was no misunderstanding about obligations concerted by the contract between attorney and client; it was the nature of the defense of our rights and considered sane critical and logical, although they kept hidden for seven months That the case was dismissed; they never did appeal the judgment or combat the reasons or findings of the court for rejecting the complaint or case, they never opposed, just let the time pass by until we went to the attorney's office and

they told us a lot of lies pretending with those excuses to be free from their compromise or representing us in trial.

However we had been contempt also in the trial by the Judge showing himself partial, helping the respondent, committing all kinds of violations to the Law, established by Civil Procedure Code of California with transcendency for the sense of Judgment, essentially when that authority did not let Appellants speak about the State Bar of California, the claimant was thus impeded to prove in trial how the State Bar of California found the Respondent guilty. In Reporter's Transcript of Proceedings pages 23 and 24, textual reference: "And then after that after that we went to the State Bar and filed and filed a complaint against him. Ms. Snoke: Objection irrelevant. The Court: As to that testimony that the objection is overruled. I don't want to get into those proceedings as to what transpired there. The Witness: Okay. The Court: What happened next between you and Mr. Luna other that at the State Bar". In page 35 textual reference: Q. by Ms. Snoke: Now, when you went to the State Bar in January of 1991, you spoke to an attorney there didn't you? A. not at the State Bar. The Court: Counsel, do you want to open up the State Bar proceedings? Ms. Snoke: No your Honor. Q. by Ms. Snoke: Prior to your visit to the State Bar, The Court: If you open up that area -- Ms. Snoke I'll withdraw the question. The Court: then I'll allow him to testify as to what transpired.

It is clear and it shows, that the trial Judge was partial unequal immodest, with favoritism, unjust, this behavior did not bring us the opportunity to submit at the trial the evidence to prove the legal malpractice,

because the State Bar found the Repondent guilty and suspended him for a year from exercising his profession. These violations was essential for sense of the Judgment because the Superior Court found medullary his sentence for fault of the proof, without concede that exigence for simple reason that the case legal malpractice is found in the same skill of the Judge; so in this aspect was unnecessary the testimony of another Lawyer; different thing could be if the malpractice was the result of another skill out of Law (Medicine, Engineering, Biology) where the Judge has no experience; but in this case he is an expert in logical reasoning the knowledge of the Law it is supposed that a Judge knows all about it, if so results unnecessary the testimony of an expert.

The unlawfulness in the procedure consists when the Court, breaking all the rules of procedure, did not allow us to prove noting about the State Bar; it means that the most important evidence in the trial was rejected with the purpose to determine in sentence or unproceed the action. The Judge of the Superior Court gave his sentence against Appellants for lack of expert testimony to prove that Respondent did not use or neglected to use the standard of care in our case according to what the Judge said "Expert Evidence is conclusive"; so first reject all documents and references from the State Bar, trial exhibit No. 70, where they told us that we had a case of Legal Malpractice, against Moises Luna and Associates; Notwithstanding therefore and consider "Expert Evidence Conclusive"; in that way the Judgment is unjust because it is unlawful to break the principles of right, consider how the Judge never appreciated the reason of the claimant, he always made it possible to damage

us, we can not believe it, how could he be Judge and party at the same time in the trial, without taking care he harmed and denied us all important opportunities to be heard in the procedure, violating thus our rights. For these reasons we appeal the Judgement and defend our interests, at the Court of Appeal of the State of California Second Appellate District, at this high authority we expressed the offences caused throughout the procedure at the Superior Court.

We tried to submit to the Court of Appeal the document we received two months later after our trail from the State Bar (Apr 14, 1994) letter from the State Bar) advising Appellants that an order had been issued suspending Mr. Luna from the practice of Law for one year, due to Appellants complaint at the State Bar against Moises Luna, for malpractice, this order was issued by the Supreme Court of California. The Superior Court never allowed Appellants to prove the malpractice complaint filed with the State bar and the Court of Appeal neither. If so, how could we possibly have the opportunity to execute the evidence required by Law to assure the claimant's petitions, when the rights of the Appellants were always denied, textually referred in the sentence of the document from the Court of Appeal affix in the appendix: "Appellants moved to augment the record with three documents: a notice from the Supreme Court to Respondent re discipline, a pleading in the underlying case and a letter from the Los Angeles County Bar Association's Lawyer Referral Service to Appellant Vasques acknowledging payment of $25 for a referral. We denied the motion. Appellants have asked us to reconsider that ruling. Since we must review the trial court, the documents with

which Appellants wish to augment the record have no legal relevance. The motion for reconsideration is denied". After all the Court of Appeal pronounced Judgment Affirmed, these findings violated again our rights because consider find substantial evidence for the trial court's decision and when two or more inferences can be reasonably deduced from the evidence, the reviewing court is without power to substitute its deduction for those of the trial court. That the Judge can not act as a witness and required expert testimony of the duty of the attorney, also the sentence consider that at trial Appellants marked for identification, but did not offer into evidence, since the documents were not moved into evidence they could not be considered by the trail court and will not be considered by this Court of Appeal.

All these opinions are incorrect and unjust and unlegal, just like we will explain in Reasons for Granting the Petition, the findings are illegal because how can the expert testimoney be submitted at trial if the judge evidently did not let us offer it in the exact moment, and the documents could not be offered because they did not exist yet. In searching justice after the decision of the Court of Appeal we went to promote in the Supreme Court of California a Petition for Review but it was denied on Jan 3, 1996, date computable for the terms of this Writ, that is our hope to find really JUSTICE with this Petition for a Writ of Certiorari.

This case presents the Court with opportunities important and troubling aspects of the Judge's use of the Legal Malpractice Laws in the State of California; this case would permit the Court to resolve a conflict between the courts of California, specific the Superior Court of Los Angeles County, Court of Appeal Second Appellate District Division Five and the Supreme Court of California, as required in actions of Legal Malpractice the expert testimony if the attorney's negligence is so clearly contrary to established standards of care and breach that a trier of fact may find professional negligence without expert testimony. The case also would permit the Court to rectify the Court of Appeal decision that denied the opportunities to he heard and rejected the transcendental evidences when affirmed the Judgment of the Superior Court.

A decision by this Court would also resolve several conflicts among the Courts of California to have uniform standards for deciding the action of Legal Malpractice without expert testimony, because the judge has knowledge of the Law if so then it is unnecessary to require an expert of the Law evidently when the attorney's negligence is so clearly that can be appreciated at sight.

Finally this case would permit the Court to establish if the Courts of California violated the Constitution (article III Section 2 and Amendment XI) Principal of Equity of the people of the United States of America must be granted always.

1. IF THE TRIAL COURT NEVER LET US PROVE THE LEGAL MALPRACTICE OF THE ATTORNEY, WITH EXPERT TESTIMONY LIKE JUDGE CONSIDERED IN THE JUDGMENT, IS IMPORTANT TO MANIFEST THAT IT WAS BECAUSE THERE WAS TOO MUCH VIOLATIONS TO THE PRINCIPLE OF THE PARTY'S EQUALITY IN THE PROCEEDURE.

Since our case began the destiny seems that all hopes of finding Justice and Equity were so far away for us when the Courts of California denied our rights without a Legal reason for doing it; however we had been contempt also in the trial by the judge showing himself partial, immodest, unjust, helping the Respondent, committing all kinds of violations to the Law in norms established by Civil Proceedure Code of California, transgressions with transcendency for the sense of the Judgment because he never let us ingress the evidence of the State Bar of California of course he knew that evidence was important for finding the sentence. In the trial the judge stopped us from submitting the evidence from the State Bar when he said to talk about anything other that what transpired at the State bar, the partial behavior of the Judge violated the Law evidently, ain't no doubt about it, it's notorious the favoritism and unequal in the conduct and proceedings, all these aspects caused us violations of our rights.

In the Superior Court during the trial the Judge said that when appearing in propria persona without a counsel then he can not help us in noting, but now we think and see how he harm and injured us violating the procedures of the Law, as In Re- Smith, 432 P.2d 231, 62 Cal. Rptr. 615,67 C.2d 460 indicated "Supreme Court has the duty to assure that the public will be protected in performance of the high duties of an at-

torney, and its primary concern must be fulfillment of proper professional standards, whatever the unfortunate cause". This case teaches us and reflects the important opinion about the duty of the Courts of California to protect the public, but in our case they did not, there was no reason for this behavior, and it originated us damages and prejudices. Just because the Judge did not let Appellants say anything about the State Bar proceedings against attorney Moises Luna that later was suspended for one year, thereby it was necessary to talk about the State Bar it was proof, with bad faith the Judge treated us in the trial, whilst he was like a counsel for the Respondent. It's obviously partial and unequal in the proceedure.

2. WHEN AT TRIAL THERE ARE ENOUGH ELEMENTS TO PROVE THE ACTION OF LEGAL MALPRACTICE, WITHOUT THE EXISTENCE OF AN EXPORT TESTIMONY, THERE IS NO REASON TO EXACT IT BECAUSE THE JUDGE KNOWS THE LAW, IS A PROFESSIONAL OF THAT MATTER AND EVIDENTLY HAS A SKILL AS A LAWYER. THAT'S WHY IT WAS VIOLATED ALL THE ARTICLES INDICATED IN THIS POINT FROM THE CIVIL PROCEDURE CODE OF THE STATE OF CALIFORNIA AND THE CASES INDICATED ALSO

In &1427 of Civil Code of California establishes that an obligation is a legal duty, by which a person is bound to do or not to do a certain thing, and &1549 indicates that a contract is an agreement to do or not to do a certain thing, thereby the duty is an element in the action of Legal Malpractice and is an aptitude of the Judge. In Rule 3-110 of rules of Conduct of California is clear for the purpose in any Legal service shall mean to apply the 1) diligence 2) learning and skill, and 3) mental, emotional and physical ability reasonably necessary for the performance of such service; this rule must apply in the case, as been said in, Hutchins v.Municipal Court of Santa Monica Judicial Dist. Los Angeles County,

132 Cal. Rptr. 158,61 C.A. 3d 77 "Enforcement of the Rules of Professional Conduct is not intended to supersede any other Laws that may be applicable to an attorney. Rules of Professional Conduct. Rule 1". also in Jeffry v. Pounds 136 Cal. Rptr. 373,67 C.A. 3d 6 "Professional Responsibility rules seek objective of public confidence as well as internal integrity. Rules of Professional Conduct rule 5-102". Those expositions may be applied in our case in harmony because the facts rendered by the claimant and testimony are so clear to estimate reasonably found in the Law. Another case has been established: Alhino. v. Starr, 169 Cal. Rptr. 136,112 C.A. 2d 158 "Elements of Legal Malpractice are, duty of professional to use such skill, prudence and diligence as other members of profession commonly posses and exercise, breach of that duty, proximate causal connection between negligent conduct and resulting injury, and actual loss or damage resulting from professional's negligence", another case: Wright v. Williams, 121 Cal. Rptr. 194,47 C.A. 3d 802 "Attorney Malpractice is to be determined by rules that apply to professional negligence generally, subject to qualification that trial court must determine Legal questions which underlie ultimate decision". In the case: Kirsh v. Duryea, 578 P. 2d 935,146 Cal. Rptr. 218,21 C.3d 303,6 A.L.R. 4th 334 "Attorney has the obligation not only to protect his client's interest but also to respect legitimate interests of fellow members of the bar, Judiciary and administration of Justice".

And the next case indicate: Neel v. Magna, Olney, Levy, Cathcart and Gelfand, 491 p.2d 421,98 Cal. Rptr. 837, 6C3d 176 (Cal. 1971) "such skill, prudence and diligence as Lawyers of ordinary skill and capacity

commonly posses and exercise in performance of tasks which they undertake, and when such failure proximately causes damages it gives rise to an action of tort". The next case pertains exactly to our case because Moises Luna did not put in the complaint the facts that we told him, it was an element of the action for Legal Malpractice, when we proved in the trial that all he told us was: "Well we never lie, we know what we are doing", "Attorney has the duty": the case indicate: Horne v. Peckham 158 Cal. Rptr. 714,97 C.A. 3d 404 "Attorney has the duty to avoid involving his client in murky areas of Law if research reveals alternative courses of conduct; attorney should at least inform his client of uncertainties and let his client make the decision". If so, by this teaching or case, it is clear that we really did prove the action against Moises Luna, all the elements that were required we took to the trial court and these cases fortify our case and reasons, the Judge knows the Law so he must apply it, it results illegal to require more elements of proof than needed according to the Law. "A client bringing a Malpractice action against an attorney can sue on the contract if there is one and also upon the theory of negligence "Floro v. Lawton, 10 Cal. Rptr. 90,187 C.A.2d657. and another case says: "Although expert testimony is not required to establish standard of care in some cases, extent to which an attorney in the exercise of due care, will advance funds to hire investigators, depose witnesses or perform test on a client is not a matter of common knowledge, and consequently, in absence of expert testimony warranting determination of negligent investigation, Legal Malpractice Judgment, entered against attorney who withdrew from his client's medical mal-

practice action because of his belief that the case lacked merit, could not be upheld on asserted basis that attorney should have investigated further".

After all these cases, we can affirm that expert testimony was not needed to prove the action in our case.

3. THE FINDINGS OF THE COURT OF APPEAL REFERRING IN THE CASE WHEN SEVERAL DOCUMENTS WERE REJECTED AT THE TRIAL COURT, ARE ILLEGAL REASONS FOR DISREGARD IMPORTANT EVIDENCE NOT ADMITTED IN FIRST INSTANCE BECAUSE THE JUDGE WAS PARTIAL, AND THOSE PROOFS ARE THE CONSEQUENCE OF THE INVESTIGATION IN THE STATE BAR OF CALIFORNIA.

In the case: In Re Tanya F., 168 Cal. Rptr. 713 indicate: "A court cannot take Judicial notice hearsay allegations as being true, just because they are part of a court record or file, nor it may take Judicial notice of existence of each document in a court file, but it can take Judicial notice of the truth of facts asserted in documents such as orders, findings of fact, and conclusions of Law": Thereby the Court of Appeal committed a violation of the Law in which it must accept those documents that are the consequence of the investigation of the Malpractice at the State Bar and did not ingress in the trial court because they existed after the procedure in first instance.

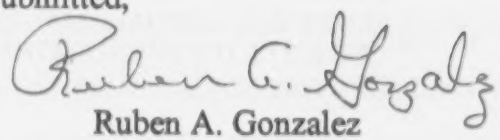
Also because the Judge did not let us move into evidence, with bad faith he stopped us from proving the State Bar proceedings; all documents rejected by the Court of Appeal belong and are the proof of the action and it was illegal its decision of denying that evidence, it caused an evident violation of the Law transcendental for the sense of the Judgment.

CONCLUSION

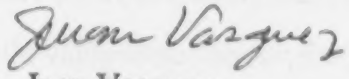
The petition for a writ of certiorari should be granted.

Dated: Mar 15, 1996

Respesctfully Submitted,



Ruben A. Gonzalez



Juan Vasquez

in pro per,

APPENDIX

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELATE DISTRICT

DIVISION FIVE

RUBEN GONZALEZ et al., Plaintiffs and Appellants v. MOISES LUNA, Defendant and Respondent.	B083281 (Super. Ct. No. BC044370)

COURT OF APPEAL - SECOND DIST.
OCT 18 1995
Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Ronald E. Cappai, Judge. Affirmed

Ruben Gonzalez and Juan Vasquez, in por. per., for Plaintiffs and Appellants.

Wilner, Klein & Siegel and Laura J. Snoke for Defedant and Respondent.

BEST AVAILABLE COPY

Appellants Ruben Gonzalez and Juan Vasquez appeal from a judgment entered in favor of respondent Moises Luna on their complaint for legal malpractice. We affirm the judgement.

Factual and Procedural Summary[1]

In August of 1989, appellants hired repondent, an attorney, to present them in prosecuting a lawsuit for breach of contract and other causes of action against Carlos Vasallo and five business entities. Appellants paid respondent $12,500 for legal services, and in October of 1989, respondent file a complaint on appellant's behalf. Appearing specially, the defendants in that action brought a motion to quash service of summons and to dismiss, on the ground that a contract between appellants and the defendants, signed on July 20, 1987, provided that any dispute would be submitted to the courts of the City of Mexico, Mexico. Respondent filed no opposition to the motion, and in May of 1990 the complaint was dismissed at a hearing at which respondent did not appear. This lawsuit, for malpractice, followed.

At trial of the malpractice suit, all parties waived a jury. The court allowed appellants, who appeared in pro per, to testify in a narrative fashion.

Appellants testified that they made a movie in Mexico and came to the United States to seek a distributor. On December 3, 1987, at the Sheraton

[1] *Appellants moved to augment the record with three documents: a notice from the Supreme Court to respondent re discipline, a pleading in the underlying case, and a letter from the Los Angeles County Bar Association's Lawyer Referral Service to appellant Vasquez acknowledging payment of $25 for a referral. We denied the motion. Appellants have asked us to reconsider that ruling. Since we must review the trial court's decision based on the evidence presented to the trial court, the documents with which appellants wish to augment the record have no legal relevance. The motion for reconsideration is denied.*

Hotel in Universal City, Gonzalez signed a distribution contract with Vasallo.[2] In addition to the provisions of the contract, Vasallo orally promise to translate the movie into English so that it could achieve a broader market, to advance $50,000 for the making of a new film, and to pay for copies of the movie. Later appellants, noticed that the date on the contract was August 5, 1987, which was erroneous, as was the indication of the place where the contract was signed, which was stated as Mexico City. Appellants concluded that the contract was fraudulent and lost confidence in Vasallo. Vasallo exhibited the movie, but told appellants that it was not making a profit, and gave them little or no money. Appellants hired respondent to bring an action against Vasallo on their behalf.

Respondent, who had previously represented another individual in a lawsuit against Vasallo, filed a complaint which was identical to the complaint he had previously filed, and which did not include appropriate factual and legal allegations. Respondent wrongly named them as Ruben Gonzales and Juan Velasquez and failed to properly serve the complaint. Each of appellant's claims should have resulted in a judgment for at least $150,000.

Appellants did not learn that their lawsuit had been dismissed until December of 1990, when they contacted respondent to check on the progress of the case. They did not learn the reason for the dismissal until they reviewed the Superior Court's file on the case, in January of 1991. That was the first time they saw the July 20, 1987 contract which provided that juridiction over any dispute was in Mexico. Had respondent shown them that document, they would have informed him that it was forged.

At the close of appellants' case, respondent moved for judgment under

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[2] *The contract, which was before the trial court, indicated that it was an annex to a contract entered into on July 20, 1987 in Mexico City. Gonzalez testified that when he signed the contract he did not know what "annex" meant.*

Code of Civil Procedure section 631.8.[3] The court ruled in favor of respondent on two grounds. First, the court found taht applellant's case failed because they had presented no expert evidence on duty or breach of duty. Second, the court found that on the documents submitted as evidence, including the contract between appellants and the underlying defendants which placed jurisdiction over the dispute in Mexico, appellants had not established that any action of respondent would have resulted in a different outcome on the motion to dismiss the undelying claim.

Discussion

"[S]ection 631.8 was enacted for the purpose of substituting the motion for judgment for the nonsuit motion formerly available in nonjury trials and is intended in a proper case to eliminate the necessity of defense evidence." (*Rodde v. Continental Ins. Companies* (1979) 89 Cal.App.3d420,423.) "In reviewing a judgment granted in favor of defendant after the plaintiff has completed its presentation of evidence in a court trial, the evidence is viewed most favorably to the defendant... [Citation.] The function of the reviewing court is to determine whether the judgment is supported by any competent and substantial evidence. [Citation.] The trial court's findings in granting a motion for judgment are entitled to the same respect on appeal as any other findings and are not reversible if supported by substantial evidence. [Citation.] When two or more inferences can be reasonably deduced from the evidence, the reviewing court is without power to substitute its deduction for those of the trial court." (*Kirk Corp. v. First American Title Co.* (1990) 220 Cal.App.3d 785,806.) We find substantial evidence for the trial court's decision here.

Appellants essentially contend that the evidence of malpractice was sufficient. The elements of professional malpractice are "(1) the duty of the professional to use such skill, prudence, and diligence as other members of

[3] *All further statuory references are to that code.*

his profession commonly possess and negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." (Budd v. Nixen (1971) 6 Cal.3d 195,200.) In an attorney malpractice suit, expert testimony on the standard of care and breach of that standard is unnecessary only if the attorney's negligence is so clearly contrary to stablished standard that a trier of fact find professional negligency without expert testimony. (Day. v. Rosenthal (1985) 170 Cal.App.3d 1125, 1146.) This is not such a case. While a trial judge may be presumed to know a good deal about the law, the judge cannot act as a witness. Appellant's case required expert testimony on the duty of an attorney in respondent's situation, and any breach of that duty. Appellants did not supply such testimony, and their case thus failed.

Appellants argue that the State Bar's actions against respondent proved malpractice. At trial, appellants marked for identification, but did not offer into evidence, unauthenticated correspondence between appellant Vasquez and the Sate Bar of California regarding respondent. Since the documents were not move into evidence, they could not be considered by the trial court, and will not be considered by this court. Similarly, appellants argue that the court erred in excluding Vasque'z testimony on this subject. The testimony was hearsay, and was properly excluded.

Appellants also argue that malpractice is established by the opinions of several lawyers they approached about the malpractice case, some of them referred by the Los Angeles County Bar Association's Lawyer Referral Service. However, appellants did not offer this evidence at trial, and we thus cannot consider it on appeal.

We also find substantial evidence for ruling on the second ground announced by the trial court, that no action by respondent would have resulted in a different outcome of the motion to dismiss the underlying case. The contract Gonzalez admitted to signing states on its face that it is an annex to a contract signed by the parties in Mexico on July 20, 1987. The court had before it a copy of both earlier contracts. The trial judge was

entitled to make a credibility determination regarding that earlier contract. Such a determination will not be overturned on appeal. (Kirk Corp. v. First American Title Co., supra, 220 Cal. App. 3d at p.806)

Disposition

The judgment is affirmed. Each party to bear its own cost on appeal.

NOT NO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, J.

We concur:

TURNER. P.J.

GRIGNON, J.

Second Appellate District, Division Five, No. B083281
S050122

IN THE SUPREME COURT OF CALIFORNIA

RUBEN GONZALEZ Et Al, Appellants

v.

MOISES LUNA, Respondent

SUPREME COURT
FILED
JAN 8 - 1996
Robert Wandruff Clerk
DEPUTY

Appellant's petition for review DENIED.

LUCAS

Chief Justice

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT No. 23 HON. RONALD E. CAPPAI, JUDGE

RUBEN GONZALEZ, ET AL.,
AND JUAN VASQUEZ
PLAINTIFFS,

VS.

MOISES LUNA, DBA MOISES LUNA
AND ASSOCIATES, ET AL.,
DEFENDANTS.

No. BC 044370

For the reasons stated in the Reporter's Transcript of proceedings this is the only proof of the Judgment of our case.

THE COURT: In this matter, the motion for Judgment pursuant to Code of Civil Procedure Section 631.8 made by the defendants is granted. The Court Trial in this matter was concluded in less than eight hours on the record over more than one day. No request for statement of decision was made prior to the submission of this matter for decision. Any right to a statement of decision has been waived pursuant to Code of Civil Procedure Section 632 and California Rules of Court Rule 232. The defendants shall prepare, serve and submit to this Court a proposed Judgment within ten days of today's date. Court will stand in recess on this matter. Thank You, Ladies and Gentleman.

Mr. Vasquez: Thank You, Sir.

Mr. Gonzalez: (in english) Thank You, Sir.

(The Proceedings in the above-entitled matter were concluded.

At no time during the proceedigs of the trial were the Appelants asked by the Judge if they wanted a statement of the decision or if they waived that right, Constituting another violation of our Rights.
